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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

DR. SHAUN L. W. SAMUELS  
Plaintiff,  
vs.

) Case No.: CV-13-2261-EMC

TRIVASCULAR, INC., ET AL.,  
Defendants

} Hon. Edward M. Chen

### STIMULATION AND

TRIVASCULAR, INC., ET AL.,  
Defendants ) **STIPULATION AND [PROPOSED]  
ORDER DISMISSING TRIVASCULAR'S  
COUNTERCLAIMS TWO THROUGH  
FIVE WITHOUT PREJUDICE**

TRIVASCULAR, INC.  
vs.  
Counter-Claimant,

2

**DR. SHAUN L. W. SAMUELS  
Counter-Defendant**

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1       The parties through undersigned counsel respectfully submit the following stipulation:

2       **WHEREAS**, on August 13, 2015, Samuels filed his Second Amended Complaint (Dkt. No.  
3 77);

4       **WHEREAS**, on August 27, 2015, TriVascular filed its counterclaims one (Declaratory  
5 Judgment of Non-Infringement of the '575 Patent), two (Declaratory Judgment of Invalidity of the  
6 '575 Patent), three (Breach of Co-Investigator Agreements), four (Breach of Settlement Agreement),  
7 and five (Promissory Estoppel) against Samuels (Dkt. No. 78);

8       **WHEREAS** on September 14, 2015 Samuels filed his answer to TriVascular's  
9 counterclaims, denying each counterclaim (*i.e.*, Declaratory Judgment of Non-Infringement of the  
10 '575 Patent; Declaratory Judgment of Invalidity of the '575 Patent; Breach of Co-Investigator  
11 Agreements; Breach of Settlement Agreement; and Promissory Estoppel) (Dkt. No. 80);

12       **WHEREAS**, on December 17, 2015, this Court entered a final judgment of non-  
13 infringement of the '575 patent (Dkt. No. 98);

14       **WHEREAS**, on November 3, 2016, the Federal Circuit issued a judgment and order  
15 pursuant to Fed. Cir. R. 36 affirming this Court's finding of non-infringement of the '575 patent  
16 (Case 16-1490, Dkt. No. 48);

17       **WHEREAS**, on December 29, 2016, the Federal Circuit issued a mandate to this Court (Dkt.  
18 No. 111);

19       **WHEREAS**, TriVascular's counterclaims two through five remain pending before this  
20 Court;

21       **WHEREAS**, under Fed. R. Civ. P. 41(a)(1)(A)(ii) and 41(c), TriVascular may dismiss its  
22 counterclaims two through five without a court order by filing a stipulation of dismissal signed by all  
23 parties who have appeared;

24       **WHEREAS**, between January 5, 2017 and February 14, 2017, counsel for TriVascular and  
25 counsel for Samuels met and conferred regarding TriVascular's request that Samuels stipulate to  
26 dismissal of TriVascular's counterclaims two through five without prejudice;

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**WHEREAS**, in an effort to minimize the disputes between the parties and in the interests of conserving judicial and party resources, Samuels agreed on February 14, 2017 to TriVascular's request to dismiss TriVascular's counterclaims two through five without prejudice;

**WHEREAS**, on February 15, 2017, Samuels filed Plaintiff's Objection to Reply Evidence Under Local Rule 7-3 in which he stated that "Samuels has now agreed to a dismissal without prejudice [of TriVascular's counterclaims] in order to avoid future litigation and expense." (Dkt. No. 134 at 4).

**ACCORDINGLY, IT IS HEREBY STIPULATED THAT:**

TriVascular's counterclaims two through five may be dismissed without prejudice.

DATED: March 1, 2017

Respectfully submitted,

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1                   **[PROPOSED] ORDER**

2 PURSUANT TO STIPULATION, IT IS SO ORDERED this 2<sup>nd</sup> day of March, 2017  
3 that TriVascular's counterclaims two through five are dismissed without prejudice, pursuant to Fed.  
4 R. Civ. P. 41.



10                   **ATTESTATION OF SIGNATURES**

11 I, Lien K. Dang, attest that all signatories listed, and on whose behalf the filing is submitted,  
12 concur in the filing's content and have authorized the filing.

13  
14 Dated: March 1, 2017

KIRKLAND & ELLIS LLP

16                   \_\_\_\_\_  
17                   /s/ Lien K. Dang  
Lien K. Dang

18                   Attorney for Defendants  
19                   TRIVASCULAR, INC., MICHAEL  
20                   A. CHOBOTOV, PH.D., ROBERT G.  
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